

HUMAN RIGHTS IN ISLAM

Sayyid Abul A'la Maududi

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Preface

'Man is born free, but is everywhere in chains'—the paradox is as true in the twentieth century as it was in the eighteenth or earlier ones. All attempts to seek a solution to the problem within a purely secular framework fail after a certain point. In some respects the situation in the contemporary world is an improvement over the state of affairs that prevailed three centuries ago; in others, things have deteriorated. After all totalitarianism and despotism are today more firmly entrenched in some parts of the world than they had ever been in the past and new threats to human freedom and dignity have emerged from the structure of the modern technological society. The need to reappraise the foundations on which the whole concept of human rights rests was never as pressing as it is today. Mawlana Abul A'la Mawdudi, one of the greatest thinkers of the world of Islam and a scholar whose thinking has immensely influenced people all over the world, has examined this issue in a different framework; the framework of Divine guidance contained in the sources of Islam, the Qur'an and the Sunnah.

Human Rights in Islam is an English translation of a talk given by Mawlana Mawdudi at the invitation of Civic Rights and Liberties Forum, at Flatties Hotel, Lahore, Pakistan on 16th November, 1975. To put the discussion in perspective we are including an earlier talk of Mawlana Mawdudi on the political system of Islam as chapter one to the present book. These two talks taken together would enable the reader to have a clear idea of the Islamic political framework and the nature and concept of human rights in Islam. Chapter one has been translated by the undersigned while the talk which appears in chapters two to five has been translated by Professor Ahmed Said Khan, Principal, El-Kanemi College of Islamic Theology, Maidugri, Nigeria. Dr. M. M. Ahan has reviewed and revised the latter talk in general

and the translation of Arabic text from the Qur'an and Sunnah in particular. Translation and editing of the work has been done under the auspices of the Islamic Foundation. This book is being published in co-operation with the Islamic Council of Europe and the King Abdul Aziz University on the occasion of the World of Islam Festival. We are grateful to Mr. Salem Azzam, Secretary-General, Islamic Council of Europe and Dr. Abdullah Nasif, Secretary-General, King Abdul Aziz University for their encouragement and help. Our thanks are also due to Mrs. P.R. Phillips for her useful comments on some parts of the manuscript.

The Islamic Foundation
Leicester

1st June, 1976
3 Jamadi al-Thani, 1396.

Khurshid Ahmad

Islamic Political Framework

The political system of Islam has been based on three principles, viz: Tawhid (Unity of God), Risala (Prophethood) and Khilafa (Caliphate)¹. It is difficult to appreciate the different aspects of Islamic polity without fully understanding these three principles. I will therefore begin with a brief exposition of them.²

Tawhid means that one God alone is the Creator, Sustainer and Master of this universe and of all that exists in it—organic or inorganic. The sovereignty of this kingdom is vested only in Him. He alone has the right to command or forbid. Worship and obedience are due to Him alone, none else sharing it in any degree or form. Life, in all its multifarious forms, our own physical organs and faculties, the apparent control which we have over everything that exists in this universe, and the things themselves—none of them has been created or acquired by us in our own right. They are the bountiful provisions of God and in bestowing them upon us, He is associated with no one. Hence, it is not for us to decide the aim and purpose of our existence or to prescribe the limits of our worldly authority nor is anyone else entitled to make these decisions for us. This right rests only in God, who has created us, endowed us with mental and physical faculties, and all material provisions for our use. This principle of

1 This is an English translation of a talk given by the author on Radio Pakistan, Lahore, on 20th January 1948. The text has been slightly revised. —Editor

2. For a detailed exposition, see Mawdudi, *Islamic Law and Constitution*, Lahore, 1960, Ch. 4.

the Unity of God altogether negates the concept of the legal and political sovereignty of human beings. No individual, family, class or race can set themselves above God. God alone is the Ruler and His commandments are the law of Islam.

The medium through which we receive the law of God is known as *risala* (prophethood). We have received two things from this source; (a) The Qur'an, the Book in which God has expounded His law; and (b) the authoritative interpretation and exemplification of the Book of God by the Prophet Muhammad, through word and deed, in his capacity as the representative of God. The broad principles on which the system of human life should be based have been stated in the Book of God. Further, the Prophet of God has, in accordance with the Divine Book, set up a model of the system of life in Islam by practically implementing the law and providing necessary details where required. The combination of these two elements, according to Islamic terminology, is called the *Shari'a*.

Let us now consider *Khilafa*, which means "representation". The real position and place of man, according to Islam, is that of the representative of God on this earth, His vicegerent; that is to say, by virtue of the powers delegated to him by God, he is required to exercise Divine authority in this world within the limits prescribed by God.

Now take, for example, the case of an estate of yours which someone else has been appointed to administer on your behalf. You will see that four conditions are invariably fulfilled in this case. First, the real ownership of the estate remains vested in you and not in the administrator; secondly, he administers your property only in accordance with your instructions; thirdly, he exercises his authority within the limits prescribed by you; and fourthly, in the administration of the trust he executes your will and fulfils your intention and not his own. These four conditions are so inherent in the very concept of "representation" that they come to mind as soon as one utters the word "representation". If

any representative does not fulfil these four conditions he will naturally be blamed for abusing his authority and for breaking the covenant which was implied in the concept of "representation". This is exactly what Islam means when it affirms that man is the representative (*Khalifa*) of God on earth. Hence, these four conditions are also involved in the concept of *Khilafa*. The state that is established in accordance with this political theory will in fact be a caliphate under the sovereignty of God and will have to fulfil the purpose and Will of God by working on God's earth within the limits prescribed by Him and in accordance with His instructions and injunctions.

DEMOCRACY IN ISLAM

The above explanation of the term *khilafa* also makes it abundantly clear that no individual or dynasty or class can be *khalifa*, but that the authority of *khilafa* is bestowed on the entire group of people, the community as a whole, which is ready to fulfil the conditions of representation after subscribing to the principles of *tawhid* (Unity of God) and *risala* (prophethood). Such a society carries the responsibility of the *khilafa* as a whole and each one of its individuals shares the Divine *khilafa*. This is the point where democracy begins in Islam. Every person in an Islamic society enjoys the rights and powers of the caliphate of God and in this respect all individuals are equal. No one takes precedence over another or can deprive anyone else of his rights and powers. The agency for running the affairs of the state will be formed with the will of these individuals, and the authority of the state will only be an extension of the powers of the individuals delegated to it. Their opinion will be decisive in the formation of the government which will be run with their advice and in accordance with their wishes. Whoever gains their confidence will undertake the duty and obligations of the caliphate on their behalf; and when he loses this confidence he will have to step down. In this respect the political system of Islam is a perfect form of democracy—as perfect as a democracy can ever be. Of course what distinguishes Islamic democracy from Western

democracy is that while the latter is based on the concept of popular sovereignty the former rests on the principle of popular *khilafa*. In Western democracy, the people are sovereign, in Islam sovereignty is vested in God and the people are His caliphs or representatives. In the former the people make their own laws; in the latter they have to follow and obey the laws (*Shari'a*) given by God through His Prophet. In one the government undertakes to fulfil the will of the people; in the other the government and the people who form it have all to fulfil the purpose of God. In brief, Western democracy is a kind of absolute authority which exercises its powers in a free and uncontrolled manner whereas Islamic democracy is subservient to the Divine law and exercises its authority in accordance with the injunctions of God and within the limits prescribed by Him.

THE PURPOSE OF THE ISLAMIC STATE

This being the essence of Islamic Political Theory, we may now examine the type of state which is built on the foundations of *tawhid* (the Unity of God), *risala* (the prophethood of Muhammad) and *khilafa* (the caliphate).³

The Holy Qur'an clearly states that the aim and purpose of this state is the establishment, maintenance and development of those virtues which the Creator of this universe wishes human life to be enriched by and the prevention and eradication of those evils the presence of which in human life is utterly abhorrent to God. The State of Islam is not intended for political administration only nor for the fulfilment through it of the collective will of any particular set of people; rather, Islam places a high ideal before the state for the achievement of which it must use all the means at its disposal. And this purpose is that the qualities of purity, beauty, goodness, virtue, success and prosperity which God wants to flourish in the life of His people

3. For a detailed study of all these and other relevant points, see *Islamic Law and Constitution*, Ch. 4, Sec. IV and V; Ch. 5, Sec. III, V and VI; Ch. 6, Sec. IV

—Editor

should be engendered and developed and that all kinds of exploitation, injustice and disorder which, in the sight of God, are ruinous for the world and detrimental to the life of His creatures are suppressed and prevented. As well as placing before us this high ideal Islam gives us a clear outline of its moral system stating positively the desired virtues and the undesirable evils. Keeping this outline in view the Islamic state can plan its welfare programme in every age and in any environment.

The persistent demand made by Islam is that the principles of morality must be observed at all cost and in all walks of life. Hence, it lays down an unalterable policy for the state to base its politics on justice, truth, and honesty. It is not prepared, under any circumstances whatsoever, to tolerate fraud, falsehood and injustice for the sake of any political, administrative or national expediency. Whether it be relations between the rulers and the ruled within the state, or the relations of the state with other states, precedence must always be given to truth, honesty, and justice over material considerations. It imposes similar obligations on the state as on the individual, viz: to fulfil all contracts and obligations, to have uniform standards for dealings; to remember duties along with the rights and not to forget the rights of others when expecting them to fulfil their obligations; to use power and authority for the establishment of justice and not for the perpetration of injustice; to look upon duty as a sacred obligation and to fulfil it scrupulously; and to regard power as a trust from God and use it with the belief that one has to render an account of one's actions to Him in the life Hereafter.

FUNDAMENTAL RIGHTS

Although an Islamic state may be set up in any part of the earth, Islam does not seek to restrict human rights or privileges to the geographical limits of its own state. Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances

whether such a person is resident within the territory of the Islamic state or outside it, whether he is at peace with the state or at war. Human blood is sacred in any case and cannot be spilled without justification. It is not permissible to oppress women, children, old people, the sick or the wounded. Woman's honour and chastity are to be respected under all circumstances. The hungry person must be fed, the naked clothed, and the wounded or diseased treated medically irrespective of whether they belong to the Islamic community or are from amongst its enemies. These, and other provisions⁴ have been laid down by Islam as fundamental rights for everyman by virtue of his status as a human being to be enjoyed under the constitution of an Islamic state. Even the rights of citizenship in Islam are not confined to persons born within the limits of its state but are granted to every Muslim irrespective of his place of birth. A Muslim *ipso facto* becomes the citizen of an Islamic state as soon as he sets his foot on its territory with the intent to live there and thus enjoys equal rights of citizenship along with those who acquire its citizenship by birth. Citizenship has therefore to be common among all the Islamic states that (may) exist in the world and a Muslim will not need any passport for entry to or exit from any of them. And every Muslim is to be regarded as eligible and fit for all positions of the highest responsibility in an Islamic state without distinction of race, colour or class⁵.

Islam has also laid down certain rights for the non-Muslims who may be living within the boundaries of an Islamic state and these rights must necessarily form part of the Islamic constitution⁶. According to the Islamic terminology such non-Muslims are called *dhimmis* (the covenanted), implying that the Islamic state has entered into a covenant with them and

4 Discussed in the following Chapters.

5. Some of the points referred to here are to materialise when the Islamic state has attained its final form. As far as the transitory phase is concerned efforts will be made to approach them as early as possible.

—Editor

6 For details, see *Islamic Law & Constitution*, Ch. 8.

guaranteed their protection. The life, property and honour of a *dhimmi* (non-Muslim citizen) is to be respected and protected exactly like that of a Muslim citizen. There is no difference at all between a Muslim and a non-Muslim citizen in respect of the civil or criminal law. The Islamic state shall not interfere with the personal rights of the non-Muslims. They will have full freedom of conscience and belief and will be at liberty to perform their religious rites and ceremonies in their own way. Not only can they propagate their religion but they are entitled even to criticize Islam within the limits laid down by law and decency. The rights given in this respect are not limited, but the civil law of the country is to be fully respected and all criticism will have to be made within its framework which would be applicable to all citizens of the state. These, as well as many other rights, have been granted to the *dhimmis* in Islam. These rights are of an irrevocable nature. The non-Muslims cannot be deprived of them unless they renounce the covenant which grants them citizenship. Whatever be the extent of oppression which a non-Muslim state may perpetrate on its Muslim citizens it is not permissible for an Islamic state to retaliate on its non-Muslim subjects in the slightest degree; even if all the Muslims outside the boundaries of an Islamic state are massacred, the state cannot unjustly shed the blood of a single non-Muslim citizen living within its boundaries.

EXECUTIVE AND LEGISLATURE

The responsibility for the administration of the government, in an Islamic state, is entrusted to an *amir* (leader) who may be compared to the president or the prime minister in a modern democratic state. All adult men and women who believe in the fundamentals of the constitution will be entitled to vote for the election of the *amir*⁷.

7. See, *Islamic Law and Constitution*, Ch. 6, Sec. IV-VI.

The basic qualifications for the election of an *amir* are that he should command the confidence of the largest number of people in respect of his knowledge and grasp of the spirit of Islam; he should possess the Islamic quality of fear of God and be endowed with qualities of statesmanship. In short, he should have both virtue and ability. A *shura* (advisory council) is also to be elected by the people for assisting and guiding the *amir* in the administration of the state. It will be incumbent on the *amir* to administer the country with the advice of this *shura*. The *amir* can retain office only so long as he enjoys the confidence of the people and will have to relinquish his office when he loses this confidence. But as long as he retains such confidence he will have the authority to govern and exercise the powers of government in consultation with the *shura* (advisory council) and within the limits set by the *sharia*. Every citizen will have the right to criticize the *amir* and his government and all reasonable means for the ventilation of public opinion will be available.

Legislation in an Islamic state will be restricted within the limits prescribed by the law of the *sharia*. The injunctions of God and His Prophet are to be accepted and obeyed and no legislative body can make any alterations or modifications in them or make any law contrary to them. As for the commandments which are liable to two or more interpretations the duty of ascertaining the real intent of the *sharia*, in such cases, will rest on people possessing a specialized knowledge of the law of the *sharia*. Hence such affairs will have to be referred to a sub-committee of the advisory council comprising men learned in Islamic law. Great scope will still be available for legislation on questions not covered by any specific injunctions of the *sharia* and the advisory council or legislature will be free to legislate in regard to these matters.

In Islam the judiciary is not placed under the control of the executive. It derives its authority directly from the *sharia* and is answerable to God. The judges should be appointed by the

government but once a judge has occupied the bench he will have to administer justice among the people according to the law of God in an impartial manner, and the organs and functionaries of the government will not be outside his legal jurisdiction, so that even the highest executive authority of the government is liable to be called upon to appear in a court of law as a plaintiff or defendant like any other citizen of the state. Rulers and ruled are subject to the same law and there can be no discrimination on the basis of position, power or privilege. Islam stands for equality and scrupulously sticks to this principle in social, economic and political realms alike.

Human Rights, the West and Islam

Before I discuss the human rights in Islam I would like to explain a few points about two major approaches to the question of human rights; the Western and the Islamic. This will enable us to study the issue in its proper perspective and avoid some of the confusion which normally befogs such a discussion.

THE WESTERN APPROACH

The people in the west have the habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely unaware of all these benefits. Now let us look at the question of human rights. It is very loudly and vociferously claimed that the world got the concept of basic human rights from the *Magna Carta* of Britain; though the *Magna Carta* itself came into existence six hundred years after the advent of Islam. But the truth of the matter is that until the seventeenth century no one even knew that the *Magna Carta* contained the principles of Trial by Jury; *Habéas Corpus*, and the Control of Parliament on the Right of Taxation. If the people who had drafted the *Magna Carta* were living today they would have been greatly surprised if they were told that their document also contained all these ideals and principles. They had no such intention, nor were they conscious of all these concepts which are now being attributed to them. As far as my knowledge goes the Westerners had no concept of human rights and civic rights before the seventeenth century. Even after the seventeenth

century the philosophers and the thinkers on jurisprudence though presented these ideas, the practical proof and demonstration of these concepts can only be found at the end of the eighteenth century in the proclamations and constitutions of America and France. After this there appeared a reference to the basic human rights in the constitutions of different countries. But more often the rights which were given on paper were not actually given to the people in real life. In the middle of the present century, the United Nations, which can now be more aptly and truly described as the Divided Nations, made a Declaration of Universal Human Rights, and passed a resolution against genocide and framed regulations to check it. But as you all know there is not a single resolution or regulation of the United Nations which can be enforced. They are just an expression of a pious hope. They have no sanctions behind them, no force physical or moral to enforce them. Despite all the high-sounding ambitious resolutions of the United Nations, human rights have been violated and trampled upon at different places, and the United Nations has been a helpless spectator. She is not in a position to exercise an effective check on the violation of human rights.

THE ISLAMIC APPROACH

The second point which I would like to clarify at the very outset is that when we speak of human rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative assembly. The rights granted by the kings or the legislative assemblies, can also be withdrawn in the same manner in which they are conferred. The same is the case with the rights accepted and recognised by the dictators. They can confer them when they please and withdraw them when they wish; and they can openly violate them when they like. But since in Islam human rights have been conferred by God, no legislative assembly in the world, or any government on earth has the right or authority to make an

amendment or change in the rights conferred by God. No one has the right to abrogate them or withdraw them. Nor are they the basic human rights which are conferred on paper for the sake of show and exhibition and denied in actual life when the show is over. Nor are they like philosophical concepts which have no sanctions behind them.

The charter and the proclamations and the resolutions of the United Nations cannot be compared with the rights sanctioned by God; because the former is not applicable on anybody while the latter is applicable on every Believer. They are a part and parcel of the Islamic Faith. Every Muslim or administrators who claim themselves to be Muslims will have to accept, recognise and enforce them. If they fail to enforce them, and start denying the rights that have been guaranteed by God or make amendments and changes in them, or practically violate them while paying lip service to them, the verdict of the Holy Qur'an for such governments is clear and unequivocal:

"Those who do not judge by what God has sent down are the disbelievers (Kafirun)" (5:44).

The following verse also proclaims: "They are the wrong-doers (zalimun)" (5:45), while a third verse in the same chapter says: "They are the perverse and law-breakers (fasiqun)" (5:47). In other words this means that if the temporal authorities regard their own words and decisions to be right and those given by God as wrong they are disbelievers. If on the other hand they regard God's commands as right but wittingly reject them and enforce their own decisions against God's then they are the mischief-makers and the wrong-doers. Fasiq, the law breaker is the one who disregards the bond of allegiance and *zalim* is he who works against the truth. Thus all those temporal authorities who claim to be Muslims and yet violate the rights sanctioned by God belong to one of these two categories, either they are the disbelievers or are the wrong-doers and mischief-makers. The

rights which have been sanctioned by God are permanent, perpetual and eternal. They are not subject to any alterations or modifications, and there is no scope for any change or abrogation.

3

Basic Human Rights

The first thing that we find in Islam in this connection is that it lays down some rights for man as a human being. In other words it means that every man whether he belongs to this country or that, whether he is a believer or unbeliever, whether he lives in some forest or is found in some desert, whatever be the case, he has some basic human rights simply because he is a human being, which should be recognised by every Muslim. In fact it will be his duty to fulfil these obligations.

1. THE RIGHT TO LIFE

The first and the foremost basic right is the right to live and respect for human life. The Holy Quran lays down:

"Whosoever kills a human being (without any reason like) manslaughter, or corruption on earth, it is though he had killed all mankind" (5:32).

As far as the question of taking life in retaliation for murder or the question of punishment for spreading corruption on this earth is concerned, it can be decided only by a proper and competent court of law. If there is any war with any nation or country, it can be decided only by a properly established government. In any case, no human being has any right by itself to take human life in retaliation or for causing mischief on this earth. Therefore it is incumbent on every human being that under no circumstances should he be guilty of taking a human life. If anyone has murdered a human being, it is as if he has slain the entire human race. These instructions have been repeated in

the Holy Quran in another place saying:

"Do not kill a soul which Allah has made sacred except through the due process of law" (6:151).

Here also homicide has been distinguished from destruction of life carried out in pursuit of justice. Only a proper and competent court will be able to decide whether or not an individual has forfeited his right to life by disregarding the right to life and peace of other human beings. The Prophet, may God's blessings be on him, has declared homicide as the greatest sin only next to polytheism. The Tradition of the Prophet reads: "The greatest sins are to associate something with God and to kill human beings." In all these verses of the Quran and the Traditions of the Prophet the word 'soul' (*nafs*) has been used in general terms without any distinction or particularisation which might have lent itself to the elucidation that the persons belonging to one's nation, the citizens of one's country, the people of a particular race or religion should not be killed. The injunction applies to all human beings and the destruction of human life in itself has been prohibited.

'The Right to Life' has been given to man only by Islam. You will observe that the people who talk about human rights if they have ever mentioned them in their Constitutions or Declarations, then it is clearly implied in them that these rights are applicable only to their citizens or they have been framed for the white race alone. This can clearly be gleaned by the fact that human beings were hunted down like animals in Australia and the land was cleared of the aborigines for the white man. Similarly the aboriginal population of America was systematically destroyed and the Red Indians who somehow survived this genocide were confined to specified areas called Reservations. They also penetrated into Africa and hunted down human beings like wild animals. All these instances go to prove that they have no respect for human life as such and if they have, it is only on the basis of their nationality, colour or race. Contrary to this,

Islam recognises this right for all human beings. If a man belongs to a primitive or savage tribe, even then Islam regards him as a human being.

2. THE RIGHT TO THE SAFETY OF LIFE

Immediately after the verse of the Holy Quran which has been mentioned in connection with the right to life, God has said: "And whoever saves a life it is as though he had saved the lives of all mankind" (5:32). There can be several forms of saving man from death. A man may be ill or wounded, irrespective of his nationality, race or colour. If you know that he is in need of your help, then it is your duty that you should arrange for his treatment for disease or wound. If he is dying of starvation, then it is your duty to feed him so that he can ward off death. If he is drowning or his life is at stake, then it is your duty to save him. You will be surprised to hear that the Talmud, the religious book of the Jews, contains a verse of similar nature, but records it in altogether different form. It says: "Whoever destroyed a life of the Israelite, in the eyes of the Scripture, it is as if he destroyed the whole world. And whoever protected and saved one life of the Israelite, in the light of the Scripture it is as if he saved the whole world." Talmud also contains the view that if a non-Israelite is drowning and you tried to save him then you are a sinner. Can it be given a name other than racialism? We regard it as our duty to save every human life, because it is thus that we have been enjoined in the Holy Quran. On the other hand, if they regard it necessary to save the life of a human being at all, it should be the life of an Israelite. As far as other people are concerned, according to this view, they do not seem to be human enough to deserve protection of their persons. In their literature the concept of 'Goyim' for which the English word 'Gentile' and the Arabic word *Ummi* (illiterate) is used, is that they enjoy no human rights: human rights are reserved only for the children of Israel. The Quran has mentioned this belief of the Israelites and quotes the jews saying: "There is no blame on us

(for anything we may do) with regard to the unlettered folk (i.e. the *ummi*)” (3:75).

3. RESPECT FOR THE CHASTITY OF WOMEN

The third important thing that we find in the Charter of Human Rights granted by Islam is that a woman's chastity has to be respected and protected under all circumstances, whether she belongs to our own nation or to the nation of an enemy, whether we find her in the wild forest or in a conquered city; whether she is our coreligionist or belongs to some other religion or has no religion at all. A Muslim cannot outrage her under any circumstances. All promiscuous relationship has been forbidden to him, irrespective of the status or position of the woman, whether the woman is a willing or an unwilling partner to the act. The words of the Holy Quran in this respect are: “Do not approach (the bounds) of adultery” (17:32). Heavy punishment has been prescribed for this crime, and the order has not been qualified by any conditions. Since the violation of chastity of a woman is forbidden in Islam, a Muslim who perpetrates this crime cannot escape punishment whether he receives it in this world or in the Hereafter. This concept of sanctity of chastity and protection of women can be found nowhere else except in Islam. The armies of the Western powers need the daughters of their nation to satisfy their carnal appetites even in their own countries, and if they happen to occupy another country, the fate of its women folk can better be imagined than described. But the history of the Muslims, apart from a few lapses of the individuals here or there, has been free from this crime against womanhood. It has never happened that after the conquest of a foreign country the Muslim army has gone about raping the women of the conquered people, or in their own country, the government has arranged to provide prostitutes for them. This is also a great blessing which the human race has received

alified order. Furthermore this injunction was given in Makk where there was no Muslim society in existence and where generally the Muslims had to come in contact with the population of the disbelievers. Therefore the clear meaning of this verse is that anyone who asks for help and anyone who is suffering from deprivation has a right in the property and wealth of the Muslims; irrespective of the fact whether he belongs to this nation or to that nation, to this country and to that country, to this race or to that race. If you are in a position to help and a needy person asks you for help or if you come to know that he is in need, then it is your duty to help him. God has established his right over you, which you have to honour as a Muslim.

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5. INDIVIDUAL'S RIGHT TO FREEDOM

Islam has clearly and categorically forbidden the primitive practice of capturing a free man, to make him a slave or to sell him into slavery. On this point the clear and unequivocal words of the Prophet are as follows: "There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgement. Of these three, one is he who enslaves a free man, then sells him and eats this money" (Bukhari and Ibn Maja). The words of this Tradition of the Prophet are also general, they have not been qualified or made applicable to a particular nation, race, country or followers of a particular religion. The Europeans take great pride in claiming that they abolished

*From the point of view of Islam it is not only the woman who possesses chastity, the man also has it. A man who perpetrates rape or adultery does not only spoil the chastity of the woman, he also spoils his own chastity.

slavery from the world, though they had the decency to do so only in the middle of the last century. Before this, these Western powers had been raiding Africa on a very large scale, capturing their free men, putting them in bondage and transporting them to their new colonies. The treatment which they have meted out to these unfortunate people has been worse than the treatment given to animals. The books written by the Western people themselves bear testimony to this fact.

The slave Trade of Western Nations

After the occupation of America and the West Indies, for three hundred and fifty years, traffic in slave trade continued. The African coasts where the black skinned captured Africans were brought from the interior of Africa and put on the ships sailing out from those ports, came to be known as the Slave Coast. During only one century (from 1680 to 1786) the total number of free people who were captured and enslaved only for British Colonies amounts, according to the estimate of British authors, to 20 million human beings. Over the period of only one year (1790) we are told that 75,000 human beings were captured and sent for slave labour in the Colonies. The ships which were used for transporting the slaves were small and dirty. These unfortunate Africans were thrust into the holds of these ships like cattle right up to the top and many of them were chained to the wooden shelves on which they could hardly move because these were only eighteen inches apart, kept one on top of the other. They were not provided with suitable food, and if they fell ill or were injured, no attempt was made to provide them with medical treatment. The Western writers themselves state that at least 20% of the total number of people who were captured for slavery and forced labour perished during their transportation from the African coast to America. It has also been estimated that the total number of people who were captured for slavery by the various European nations during the heyday of the slave trade comes to at least one hundred million. This is the record of the people who denounce Muslims day and

night for recognising the institution of slavery. It is as if a criminal is holding his finger of blame towards an innocent man.

The Position of Slavery in Islam

Briefly I would like to tell you about the position and nature of slavery in Islam. Islam tried to solve the problem of the slaves that were in Arabia by encouraging the people in different ways to set their slaves free. The Muslims were ordered that in expiation of some of their sins they should set their slaves free. Freeing a slave by one's own free will was declared to be an act of great merit, so much so that it was said that every limb of the man who manumits a slave will be protected from hell-fire in lieu of the limb of the slave freed by him. The result of this policy was that by the time the period of the Rightly-Guided Caliphs was reached, all the old slaves of Arabia were liberated. The Prophet alone liberated as many as 63 slaves. The number of slaves freed by Aisha was 67, Abbas liberated 70, Abd Allah bin Umar liberated one thousand, and 'abd al-Rahman purchased thirty thousand and set them free. Similarly other Companions of the Prophet liberated a large number of slaves, the details of which are given in the Traditions and books of history of that period.

Thus the problem of the slaves of Arabia was solved in a short period of thirty or forty years. After this the only form of slavery which was left in Islamic society was the prisoners of war, who were captured on the battlefield. These prisoners of war were retained by the Muslim Government until their Government agreed to receive them back in exchange for Muslim soldiers captured by them, or arranged the payment of ransom on their behalf. If the soldiers they captured were not exchanged with Muslim prisoners of war, or their people did not pay their ransom money to purchase their liberty, then the Muslim Government used to distribute them among the soldiers of the army which had captured them. This was a more humane and proper way of disposing of them than retaining them like cattle in concentration camps and taking forced labour from them and, if

their women folk were also captured, setting them aside for prostitution. In place of such a cruel and outrageous way of disposing of the prisoners of war, Islam preferred to spread them in the population and thus brought them in contact with individual human beings. Over and above, their guardians were ordered to treat them well. The result of this humane policy was that most of the men who were captured on foreign battlefields and brought to the Muslim countries as slaves embraced Islam and their descendants produced great scholars, *imams*, jurists, commentators, statesmen and generals of the army. So much so that later on they became the rulers of the Muslim world. The solution of this problem which has been proposed in the present age is that after the cessation of hostilities the prisoners of war of the combatant countries should be exchanged. Whereas Muslims have been practising it from the very beginning and whenever the adversary accepted the exchange of prisoners of war from both sides, it was implemented without the least hesitation or delay. In modern warfare we also find that if one government is completely routed leaving her in no position of bargaining for the prisoners of war and the winning party gets its prisoners easily, then experience has shown that the prisoners of war of the vanquished army are kept in conditions which are much worse than the conditions of slaves. Can anyone tell us what has been the fate of the thousands of prisoners of war captured by Russia from the defeated armies of Germany and Japan in the Second World War? No one has given their account so far. No one knows how many thousands of them are still alive and how many thousands of them have perished due to the hardship of the Russian concentration and labour camps. The forced labour which has been taken from them is much worse than the service one can exact from slaves. Even perhaps in the times of ancient Pharaohs of Egypt such harsh labour might not have been exacted from the slaves in building the pyramids of Egypt, as has been exacted from the prisoners of war in Russia in developing Siberia and other backward areas of Russia, or

working in coal and other mines in below zero temperatures, ill clad, ill fed and brutally treated by their supervisors.

6. THE RIGHT TO JUSTICE

This is a very important and valuable right which Islam has given to man as a human being. The Holy Quran has laid down: "Do not let your hatred if a people incite you to aggression" (5:3). "And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness" (5:8). Stressing this point the Quran again says: "You who believe stand steadfast before God as witness for (truth and) fairplay" (4:135). This makes the point clear that Muslims have to be just not only with ordinary human beings but even with their enemies. In other words, the justice to which Islam invites her followers is not limited only to the citizens of their own country, or the people of their own tribe, nation or race, or the Muslim community as a whole, but it is meant for all the human beings of the world. Muslims, therefore, cannot be unjust to anyone. Their permanent habit and character should be such that no man should ever fear injustice at their hands, and they should treat every human being everywhere with justice and fairness.

7. EQUALITY OF HUMAN BEINGS

Islam not only recognises absolute equality between men irrespective of any distinction of colour, race or nationality, but makes it an important and significant principle, a reality. The Almighty God has laid down in the Holy Quran: " O mankind, We have created you from a male and female." In other words, all human beings are brothers to one another. They all are the descendants from one father and one mother. "And We set you up as nations and tribes so that you may be able to recognise each other" (49:13). This means that the division of human beings into nations, races, groups and tribes is for the sake of distinction, so that people of one race or tribe may meet and be acquainted with the people belonging to another race or tribe

and cooperate with one another. This division of the human race is neither meant for one nation to take pride in its superiority over others nor is it meant for one nation to treat another with contempt or disgrace, or regard them as a mean and degraded race and usurp their rights. "Indeed the noblest among you before God are the most heedful of you" (49:13). In otherwords the superiority of one man over another is only on the basis of God-consciousness, purity of character and high morals, and not on the basis of colour, race, language or nationality and even this superiority based on piety and pure conduct does not justify that such people should play lord or assume airs of superiority over other human beings. Assuming airs of superiority is in itself a reprehensible vice which no God-fearing and pious man can ever dream of perpetrating. Nor does the righteous have more privileged rights over others, because this runs counter to human equality , which has been laid down in the beginning of this verse as a general principle. From the moral point of view, goodness and virtue is in all cases better than vice and evil.

This has been exemplified by the Prophet in one of his sayings thus: "No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam, and Adam was created from clay" (Bayhaqi and Bazzaz). In this manner Islam established equality for the entire human race and struck at the very root of all distinctions based on colour, race, language or nationality. According to Islam, God has given man this right of equality as a birthright. Therefore no man should be discriminated against on the ground of the colour of his skin, his place of birth, the race or the nation in which he was born. Malcolm X, the famous leader of African Negroes in America, who had launched a bitter struggle against the white people of America in order to win civil rights for this black compatriots, when he went to perform the pilgrimage, and saw how the Muslims of Asia, Africa, Europe, America and those of

different races, languages and colours of skin, were wearing one dress and were hurrying towards God's House—the Ka'ba and offering prayers standing in one row and there was no distinction of any kind between them, then he realised that this was the solution to the problem of colour and race, and not what he had been trying to seek or achieve in America so far. Today, a number of non-Muslim thinkers, who are free from blind prejudice, openly admit that no other religion or way of life has solved this problem with the same degree of success with which Islam has done so.

8. THE RIGHT TO CO-OPERATE AND NOT TO CO-OPERATE

Islam has prescribed a general principle of paramount importance and universal application saying: "Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression" (5:2). This means that the man who undertakes a noble and righteous work, irrespective of the fact whether he is living at the North Pole or the South Pole, has the right to expect support and active co-operation from the Muslims. On the contrary he who perpetrates deeds of vice and aggression, even if he is our closest relation or neighbour, does not have the right to win our support and help in the name of race, country, language or nationality, nor should he have the expectation that Muslims will co-operate with him or support him. Nor is it permissible for Muslims to co-operate with him. The wicked and vicious person may be our own brother, but he is not of us, and he can have no help or support from us as long as he does not repent and reform his ways. On the other hand the man who is doing deeds of virtue and righteousness may have no kinship with Muslims; but Muslims will be his companions and supporters or at least his well-wishers.

4

Rights of Citizens in an Islamic State

We have discussed the human rights in general. Now we would like to take up the question of rights of the citizens in an Islamic state. As these rights are more extensive than the general human rights which have been described earlier, they need separate treatment.

1. THE SECURITY OF LIFE AND PROPERTY

In the address which the Prophet delivered on the occasion of the Farewell *Hajj*, he said: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection." God Almighty has laid down in the Holy Quran: "Anyone who kills a believer deliberately will receive as his reward (a sentence) to live in Hell for ever. God will be angry with him and curse him, and prepare dreadful torment for him" (4:93). The Prophet has also said about the *dhimmis* (the non-Muslim citizens of the Muslim state): "One who kills a man under covenant (i.e. a *dhimmi*) will not even smell the fragrance of Paradise" (Bukhari and Abu Dawud). Islam prohibits homicide but allows only one exception, that the killing is done in the due process of law which the Quran refers to as *bil-haqq* (with the truth). Therefore a man can be killed only when the law demands it, and it is obvious that only a court of law can decide whether the execution is being carried out with justice or without justification. In case of war or insurrection a just and righteous government alone, which follows the *shari'a* or the

Islamic law, can decide whether a war is just or unjust, whether taking of a life is justified or not; and whether a person is a rebel or not and who can be sentenced to death as a punishment. These weighty decisions cannot be left in the hands of a court which has become heedless to God and is under the influence of the administration. A judiciary like this may miscarry justice. Nor can the crimes of state be justified on the authority of the Holy Quran or Traditions (*Hadith*) when the state murders its citizens openly and secretly without any hesitation or on the slightest pretext, because they are opposed to its unjust policies and actions or criticize it for its misdeed, and also provides protection to its hired assassins who have been guilty of the heinous crime of murder of an innocent person resulting in the fact, that neither the police take any action against such criminals nor can any proof or witnesses against these criminals be produced in the courts of law. The very existence of such a government is a crime and none of the killings carried out by them can be called "execution for the sake of justice" in the phraseology of the Holy Quran.

Along with security of life, Islam has with equal clarity and definiteness conferred the right of security of ownership of property, as mentioned earlier with reference to the address of the Farewell *Hajj*. On the other hand, the Holy Quran goes so far as to declare that the taking of people's possessions or property is completely prohibited unless they are acquired by lawful means as permitted in the laws of God. The law of God categorically declares "Do not devour one another's wealth by false and illegal means" (2:188).

2. THE PROTECTION OF HONOUR

The second important right is the right of the citizens to the protection of their honour. In the address delivered on the occasion of the Farewell *Hajj*, to which I have referred earlier, the Prophet did not only prohibit the life and property of the Muslims to one another, but also any encroachment upon their

honour, respect and chastity was forbidden to one another. The Holy Quran clearly lays down:

- (a) "You who believe, do not let one (set of) people make fun of another set.
- (b) Do not defame one another.
- (c) Do not insult by using nicknames.
- (d) And do not backbite or speak ill of one another" (49:11-12).

This is the law of Islam for the protection of honour which is indeed much superior to and better than the western Law of Defamation. According to the Islamic law if it is proved that someone has attacked the honour of another person, then irrespective of the fact whether or not the victim is able to prove himself a respectable and honourable person the culprit will in any case get his due punishment. But the interesting fact about the Western Law of Defamation is that the person who files suit for defamation has first to prove that he is a man of honour and public esteem and during the interrogation he is subjected to the scurrilous attacks, accusations and innuendoes of the defence council to such an extent that he earns more disgrace than the attack on his reputation against which he had knocked the door of the court of law. On top of it he has also to produce such witnesses as would testify in the court that due to the defamatory accusations of the culprit, the accused stands disgraced in their eyes. Good Gracious! what a subtle point of law, and what an adherence to the spirit of law! How can this unfair and unjust law be compared to the Divine law? Islam declares blasphemy as a crime irrespective of the fact whether the accused is a man of honour or not, and whether the words used for blasphemy have actually disgraced the victim and harmed his reputation in the eyes of the public or not. According to the Islamic law the mere proof of the fact that the accused said things which according to common sense could have damaged the reputation and honour of the plaintiff, is enough for the accused to be declared guilty of defamation.

3. THE SANCTITY AND SECURITY OF PRIVATE LIFE

Islam recognises the right of every citizen of its state that there should be no undue interference or encroachment on the privacy of his life. The Holy Quran has laid down the injunction: "Do not spy on one another" (49:12). "Do not enter any houses except your own homes unless you are sure of their occupants' consent" (24:27). The Prophet has gone to the extent of instructing his followers that a man should not enter even his own house suddenly or surreptitiously. He should somehow or other inform or indicate to the dwellers of the house that he is entering the house, so that he may not see his mother, sister or daughter in a condition in which they would not like to be seen, nor he would himself like to see them in that condition. Peering into the houses of other people has also been strictly prohibited, so much so that there is the saying of the Prophet that if a man finds another person secretly peering into his house, and he blinds his eye or eyes as a punishment then he cannot be called to question nor will he be liable to prosecution. The Prophet has even prohibited people from reading the letters of others, so much so that if a man is reading his letter and another man casts sidelong glances at it and tries to read it, his conduct becomes reprehensible. This is the sanctity of privacy that Islam grants to individuals. On the other hand in the modern civilized world we find that not only the letters of other people are read and their correspondence censored, but even its photostat copies are retained for future use or blackmail. Even bugging devices are secretly fixed in the houses of the people so that one can hear and tape from a distance the conversation taking place behind closed doors. In other words it means that there is no such thing as privacy and to all practical purposes the private life of an individual does not exist.

This espionage on the life of the individual cannot be justified on moral grounds by the government saying that it is necessary to know the secrets of the dangerous persons. Though, to all

intents and purposes, the basis of this policy is the fear and suspicion with which modern governments look at their citizens who are intelligent and dissatisfied with the official policies of the government. This is exactly what Islam has called the root cause of mischief in politics. The injunction of the Prophet is: "When the ruler begins to search for the causes of dissatisfaction amongst his people, he spoils them" (Abu Dawud). The Amir Muawiya has said that he himself heard the Prophet saying: "If you try to find out the secrets of the people, then you will definitely spoil them or at least you will bring them to the verge of ruin." The meaning of the phrase 'spoil them' is that when spies (C.I.D. or F.B.I. agents) are spread all around the country to find out the affairs of men, then the people begin to look at one another with suspicion, so much so that people are afraid of talking freely in their houses lest some word should escape from the lips of their wives and children which may put them in embarrassing situations. In this manner it becomes difficult for a common citizen to speak freely, even in his own house and society begins to suffer from a state of general distrust and suspicion.

4. THE SECURITY OF PERSONAL FREEDOM

Islam has also laid down the principle that no citizen can be imprisoned unless his guilt has been proved in an open court. To arrest a man only on the basis of suspicion and to throw him into a prison without proper court proceedings and without providing him a reasonable opportunity to produce his defence is not permissible in Islam. It is related in the Hadith that once the Prophet was delivering a lecture in the Mosque, when a man rose during the lecture and said: " O Prophet of God, for what crime have my neighbours been arrested?" The Prophet heard the question and continued his speech. The man rose once again and repeated the same question. The Prophet again did not answer and continued his speech. The man rose for a third time and repeated the same question. Then the Prophet ordered that the man's neighbours be released. The reason why the Prophet

had kept quiet when the question was repeated twice earlier was that the police officer was present in the Mosque and if there were proper reasons for the arrest of the neighbours of this man, he would have got up to explain his position. Since the police officer gave no reasons for these arrests the Prophet ordered that the arrested persons should be released. The police officer was aware of the Islamic law and therefore he did not get up to say: "the administration is aware of the charges against the arrested men, but they cannot be disclosed in public. If the Prophet would inquire about their guilt *in camera* I would enlighten him." If the police officer had made such a statement, he would have been dismissed then and there. The fact that the police officer did not give any reasons for the arrests in the open court was sufficient reason for the Prophet to give immediate orders for the release of the arrested men. The injunction of the Holy Quran is very clear on this point. "Whenever you judge between people, you should judge with (a sense of) justice" (4:58). And the Prophet has also been asked by God: "I have been ordered to dispense justice between you." This was the reason why the Caliph Umar said: "In Islam no one can be imprisoned except in pursuance of justice." The words used here clearly indicate that justice means due process of law. What has been prohibited and condemned is that a man be arrested and imprisoned without proof of his guilt in an open court and without providing him an opportunity to defend himself against those charges. If the Government suspects that a particular individual has committed a crime or he is likely to commit an offence in the near future then they should give reasons of their suspicion before a court of law and the culprit or the suspect should be allowed to produce his defence in an open court, so that the court may decide whether the suspicion against him is based on sound grounds or not and if there is good reason for suspicion, then he should be informed of how long he will be in preventive detention. This decision should be taken under all circumstances in an open court, so that the public may hear the

charges brought by the government, as well as the defence made by the accused and see that the due process of law is being applied to him and he is not being victimised.

The correct method of dealing with such cases in Islam is exemplified in the famous decision of the Prophet which took place before the conquest of Makka. The Prophet was making preparations for the attack on Makka, when one of his Companions, Hatib bin Abi Balta'a sent a letter through a woman to the authorities in Makka informing them about the impending attack. The Prophet came to know of this through a divine inspiration. He ordered Ali and Zubair: "Go quickly on the route to Makka, at such and such a place you will find a woman carrying a letter. Recover the letter from her and bring it to me." So they went and found the woman exactly where the Prophet had said. They recovered the letter from her and brought it to the Prophet. This was indeed a clear case of treachery. To inform the enemy about a secret of an army and that too at the time of a war is a very serious offence tantamount to treachery. In fact, one cannot think of a more serious crime during war than giving out a military secret to one's enemy. What could have been a more suitable case for a secret hearing; a military secret had been betrayed and common sense demanded that he should be tried *in camera*. But the Prophet summoned Hatib to the open court of the Mosque of the Prophet and in the presence of hundreds of people asked him to explain his position with regard to his letter addressed to the leaders of Quraysh which had been intercepted on its way. The accused said: "O God's Messenger (may God's blessings be on you) I have not revolted against Islam, nor have I done this with the intention of betraying a military secret. The truth of the matter is that my wife and children are living in Makka and I do not have my tribe to protect them there. I had written this letter so that the leaders of Quraysh may be indebted to me and may protect my wife and children out of gratitude." Umar rose and respectfully submitted: "O Prophet, please permit me to put this traitor to

the sword." The Prophet replied: "He is one of those people who had participated in the battle of Badr*, and the explanation he has advanced in his defence would seem to be correct."

Let us look at this decision of the Prophet in perspective. It was a clear case of treachery and betrayal of military secrets. But the Prophet acquitted Hatib on two counts. Firstly, that his past records were very clean and showed that he could not have betrayed the cause of Islam, since on the occasion of the battle of Badr when there were heavy odds against the Muslims, he had risked his life for them. Secondly, his family was in fact in danger at Makka. Therefore, if he had shown some human weakness for his children and written this letter, then this punishment was quite sufficient for him that his secret offence was divulged in public and he had been disgraced and humiliated in the eyes of the Believers. God has referred to this offence of Hatib in the Holy Quran but did not propose any punishment for him except rebuke and admonition.

The attitude and activities of the Kharjites in the days of the Caliph Ali are well known to the students of Muslim history. They used to abuse the Caliph openly, and threaten him with murder. But whenever they were arrested for these offences, Ali would set them free and tell his officers: "As long as they do not actually perpetrate offences against the state, the mere use of abusive Language or the threat of use of force are not such offences for which they can be imprisoned." The Imam Abu Hanifa has recorded the following saying of the Caliph Ali: "As long as they do not set out on armed rebellion, the Caliph of the Faithful will not interfere with them." On another occasion Ali was delivering a lecture in the mosque when the Kharjites raised their special slogan there, Ali Said: "We will not deny you the right to come to the mosques to worship God, nor will we stop to

* Badr: the battleground of the first decisive victory won by the Muslims against the Makkan unbelievers in 2A. H./624C.E. in which 313 faithful routed more than 1,000 infidels, killed 70, and captured 70 Quraysh leaders.

give your share from the wealth of the state, as long as you are with us (and support us in our wars with the unbelievers) and we shall never take military action against you as long as you do not fight with us." One can visualise the opposition which Ali was facing: more violent and vituperative opposition cannot even be imagined in a present day democratic state; but the freedom that he had allowed to the opposition was such that no government has ever been able to give to its opposition. He did not arrest even those who threatened him with murder nor did he imprison them.

i. THE RIGHT TO PROTEST AGAINST TYRANNY

Amongst the rights that Islam has conferred on human beings is the right to protest against government's tyranny. Referring to the Quran says: "God does not love evil talk in public unless it is by someone who has been injured thereby" (4:148). This means that God strongly disapproves of abusive language or strong words of condemnation, but the person who has been the victim of injustice or tyranny, God gives him the right to openly protest against the injury that has been done to him. This right is not limited only to individuals. The words of the verse are general. Therefore if an individual or a group of people or a party usurps power and after assuming the reins of authority begins to tyrannise individuals or groups of men or the entire population of the country then to raise the voice of protest against it openly is the God-given right of man and no one has the authority to usurp or deny this right. If anyone tries to usurp this right of citizens then he rebels against God. The talisman of Section 144* may protect such a tyrant in this world, but it cannot save him from the hell-fire in the Hereafter.

Section 144 is the Section of Indian Penal Code of 1935 adopted by the Government of Pakistan which prohibits the assembly of five or more than five persons, forming processions, or holding protest rallies. The administrators are using this Section too frequently to silence opposition and enslave the people into obedience.

—Editor

6.FREEDOM OF EXPRESSION

Islam gives the right of freedom of thought and expression to all citizens of the Islamic state on the condition that it should be used for the propagation of virtue and truth and not for spreading evil and wickedness. This Islamic concept of freedom of expression is much superior to the concept prevalent in the West. Under no circumstances would Islam allow evil and wickedness to be propagated. It also does not give anybody the right to use abusive or offensive language in the name of criticism. The right to freedom of expression for the sake of propagating virtue and righteousness is not only a right in Islam but an obligation. One who tries to deny this right to his people is openly at war with God, the All-Powerful. And the same thing applies to the attempt to stop people from evil. Whether this evil is perpetrated by an individual or by a group of people or the government of one's own country, or the government of some other country; it is the right of a Muslim and it is also his obligation that he should warn and reprimand the evil-doer and try to stop him from doing it. Over and above, he should openly and publicly condemn it and show the course of righteousness which that individual, nation or government should adopt.

The Holy Qur'an has described this quality of the Faithful in the following words: "They enjoin what is proper and forbid what is improper" (9:71). In contrast, describing the qualities of a hypocrite, the Qur'an mentions: "They bid what is improper and forbid what is proper" (9:67). The main purpose of an Islamic government has been defined by God in the Qur'an as follows: "If We give authority to these men on earth they will keep up prayers, and offer welfare due, bid what is proper and forbid what is improper" (22:41). The Prophet has said: "If anyone of you comes across an evil, he should try to stop it with his hand (using force), if he is not in a position to stop it with his hand then he should try to stop it by means of his tongue (meaning he should speak against it). If he is not even able to use his tongue

then he should at least condemn it in his heart. This is the weakest degree of faith" (Muslim). This obligation of inviting people to righteousness and forbidding them to adopt the paths of evil is incumbent on all true Muslims. If any government deprives its citizens of this right, and prevents them from performing this duty, then it is in direct conflict with the injunction of God. The government is not in conflict with its people, but is in conflict with God. In this way it is at war with God and is trying to usurp that right of its people which God has conferred not only as a right but as an obligation. As far as the government which itself propagates evil, wickedness and obscenity and interferes with those who are inviting people to virtue and righteousness is concerned, according to the Holy Qur'an it is the government of the hypocrites.

7. FREEDOM OF ASSOCIATION

Islam has also given people the right to freedom of association and formation of parties or organisations. This right is also subject to certain general rules. It should be exercised for propagating virtue and righteousness and should never be used for spreading evil and mischief. We have not only been given this right for spreading righteousness and virtue, but have been ordered to exercise this right. Addressing the Muslims, the Holy Qur'an declares:

"You are the best community which has been brought forth for mankind. You command what is proper and forbid what is improper and you believe in God" (3:110).

This means that it is the obligation and duty of the entire Muslim community that it should invite and enjoin people to righteousness and virtue and forbid them from doing evil. If the entire Muslim community is not able to perform this duty then "let there be a community among you who will invite (people) to (do) good, command what is proper and forbid what is improper, those will be prosperous" (3:104). This clearly indicates that if the entire Muslim people collectively begins to neglect its

obligation to invite people to goodness and forbid them from doing evil then it is absolutely essential that it should contain at least a group of people which may perform this obligation. As has been said before this is not only a right but an obligation and on the fulfilment of which depends success and prosperity here as well as in the Hereafter. It is an irony with the religion of God that in a Muslim country the assembly and association that is formed for the purposes of spreading evil and mischief should have the right to rule over the country and the association and party which has been formed for propagating righteousness and virtue should live in perpetual fear of harassment and of being declared illegal. Conditions here are just the reverse of what has been prescribed by God. The claim is that we are Muslims and this is an Islamic state* but the work that is being done is directed to spreading evil, to corrupt and morally degrade and debase the people while there is an active and effective check on the work being carried out for reforming society and inviting people to righteousness. Moreover the life of those who are engaged in spreading righteousness and checking the spread of evil and wickedness is made intolerable and hard to bear.

8. FREEDOM OF CONSCIENCE AND CONVICTION

Islam also gives the right to freedom of conscience and conviction to its citizens in an Islamic state. The Holy Quran has laid down the injunction: "There should be no coercion in the matter of faith" (2:256). Though there is no truth and virtue greater than the Religion of Truth—Islam, and Muslims are enjoined to invite people to embrace Islam and advance arguments in favour of it, they are not asked to enforce this faith on them. No force will be applied in order to compel them to accept Islam. Whoever accepts it he does so by his own choice. Muslims will welcome such a convert to Islam with open arms and admit him to their community with equal rights and

* This refers to Pakistan.

privileges. But if somebody does not accept Islam, Muslims will have to recognise and respect his decision, and no moral, social or political pressure will be put on him to change his mind.

9. PROTECTION OF RELIGIOUS SENTIMENTS

Along with the freedom of conviction and freedom of conscience Islam has given the right to the individual that his religious sentiments will be given due respect and nothing will be said or done which may encroach upon this right. It has been ordained by God in the Holy Qur'an: "Do not abuse those they appeal to instead of God" (6:108). These instructions are not only limited to idols and deities, but they also apply to the leaders or national heroes of the people. If a group of people holds a conviction which according to you is wrong, and holds certain persons in high esteem which according to you is not deserved by them, then it will not be justified in Islam that you use abusive language for them and thus injure their feelings. Islam does not prohibit people from holding debate and discussion on religious matters, but it wants that these discussions should be conducted in decency. "Do not argue with the people of the Book unless it is in the politest manner" (29:46)—says the Qur'an. This order is not merely limited to the People of the Scriptures, but applies with equal force to those following other faiths.

10. PROTECTION FROM ARBITRARY IMPRISONMENT

Islam also recognises the right of the individual that he will not be arrested or imprisoned for the offences of others. The Holy Qur'an has laid down this principle clearly: "No bearer of burdens shall be made to bear the burden of another" (6:164). Islam believes in personal responsibility. We ourselves are responsible for our acts, and the consequence of our actions cannot be transferred to someone else. In other words, this means that every man is responsible for his actions. If another man has not shared this action then he cannot be held responsible for it, nor can he be arrested. It is a matter of great

regret and shame that we are seeing this just and equitable principle which has not been framed by any human being, but by the Creator and Nourisher of the entire universe, being flouted and violated before our eyes. So much so that a man is guilty of a crime or he is a suspect, but his wife is being arrested for his crime. Things have gone so far that innocent people are being punished for the crimes of others. To give a recent example, in Karachi (Pakistan), a man was suspected of being involved in a bomb throwing incident. In the course of police investigation he was subjected to horrible torture in order to extract a confession from him. When he insisted on his innocence, then the police arrested his mother, his wife, daughter and sister and brought them to the police station. They were all stripped naked in his presence, and he was stripped naked of all his clothes before their eyes so that a confession of the crime could be extracted from him. It appears as if for the sake of investigation of crime it has become proper and legal in our country to strip the innocent women folk of the household in order to bring pressure on the suspect. This is indeed very outrageous and shameful. This is the height of meanness and depravity. This is not a mere hearsay which I am repeating here, but I have full information about this case and can prove my allegations in any court of law. I would here like to ask what right such tyrants who perpetrate these crimes against mankind have to tell us that they are Muslims or that they are conducting the affairs of the state according to the teachings of Islam and their state is an Islamic state. They are breaching and flouting a clear law of the Holy Our'an. They are stripping men and women naked which is strictly forbidden in Islam. They disgrace and humiliate humanity and then they claim that they are Muslims.

11. THE RIGHT TO BASIC NECESSITIES OF LIFE

Islam has recognised the right of the needy people that help and assistance will be provided to them. "And in their wealth there is acknowledged right for the needy and the destitute"

(51:19). In this verse, the Quran has not only conferred a right to every man who asks for assistance in the wealth of the Muslims, but has also laid down that if a Muslim comes to know that a certain man is without the basic necessities of life, then irrespective of the fact whether he asks for assistance or not, it is his duty to reach him and give all the help that he can extend. For this purpose Islam has not depended only on the help and charity that is given voluntarily, but has made compulsory charity, *zakat* as the third pillar of Islam, next only to profession of faith and worship of God through holding regular prayers. The Prophet has clearly instructed in this respect that: "It will be taken from their rich and given to those in the community in need" (Bukhari and Muslim). In addition to this, it has also been declared that the Islamic state should support those who have nobody to support them. The Prophet has said: "The Head of state is the guardian of him who has nobody to support him" (Abu Dawud, Tirmidhi). The word *wali* which has been used by the Prophet is a very comprehensive word and has a wide range of meanings. If there is an orphan or an aged man, if there is a crippled or unemployed person, if one is invalid or poor and has no one else to support him or help him, then it is the duty and the responsibility of the state to support him and assist. If a dead man has no guardian or heir, then it is the duty of the state to arrange for his proper burial. In short the state has been entrusted with the duty and responsibility of looking after all those who need help and assistance. A truly Islamic state is therefore a truly welfare state which will be the guardian and protector of all those in need.

12. EQUALITY BEFORE LAW

Islam gives its citizens the right to absolute and complete equality in the eyes of the law. As far as the Muslims are concerned, there are clear instructions in the Holy Quran and *Hadith* that in their rights and obligations they are all equal: "The believers are brothers (to each other)" (49:10). "If they

(disbelievers) repent and keep up prayer and pay the welfare due they are your brothers in faith" (9:11). The Prophet has said that: "The life and blood of Muslims are equally precious" (Abu Dawud; Ibn Maja). In another *Hadith* he has said: "The protection given by all Muslims are equal. Even an ordinary man of them can grant protection to any man" (Bukhari; Muslim; Abu Dawud). In another more detailed Tradition of the Prophet, it has been said that those who accept the Oneness of God, believe in the Prophethood of his Messenger, give up primitive prejudices and join the Muslim community and brotherhood, "then they have the same rights and obligations as other Muslims have" (Bukhari; Nisai). Thus there is absolute equality between the new converts to Islam and the old followers of the faith.

This religious brotherhood and the uniformity of their rights and obligations is the foundation of equality in Islamic society, in which the rights and obligations of any person are neither greater nor lesser in any way than the rights and obligations of other people. As far as the non-Muslim citizens of the Islamic state are concerned, the rule of Islamic *sharia* (law) about them has been very well expressed by the Caliph Ali in these words: "They have accepted our protection only because their lives may be like our lives and their properties like our properties" (Abu Dawud). In other words, their (of the *dhimmis*) lives and properties are as sacred as the lives and properties of the Muslims. Discrimination of people into different classes was one of the greatest crimes that, according to the Quran, Pharaoh used to indulge in: "He had divided his people into different classes, ..." "... And he suppressed one group of them (at the cost of others)" (28:4).

13. RULERS NOT ABOVE THE LAW.

Islam clearly insists and demands that all officials of the Islamic state, whether he be the head or an ordinary employee, are equal in the eyes of the law. None of them are above the law or

can claim immunity. Even an ordinary citizen in Islam has the right to put forward a claim or file a legal complaint against the highest executive of the country. The Caliph Umar said, "I have myself seen the Prophet, may God's blessings be on him, taking revenge against himself (penalising himself for some shortcoming or failing)." On the occasion of the battle of Badr, when the Prophet was straightening the rows of the Muslim army he hit the belly of a soldier in an attempt to push him back in line. The soldier complained " O Prophet, you have hurt me with your stick." The Prophet immediately bared his belly and said "I am very sorry, you can revenge by doing the same to me." The soldier came forward and kissed the abdomen of the Prophet and said that this was all that he wanted.

A woman belonging to a high and noble family was arrested in connection with a theft. The case was brought to the Prophet, and it was recommended that she may be spared the punishment of theft. The Prophet replied: "The nations that lived before you were destroyed by God because they punished the common man for their offences and let their dignitaries go unpunished for their crimes; I swear by Him (God) who holds my life in His hand that even if Fatima, the daughter of Muhammad, has committed this crime then I would have amputated her hand." During the caliphate of Umar, Muhammad the son of Amr bin al-As the Governor of Egypt, whipped an Egyptian. The Egyptian went to Madina and lodged his complaint with the Righteous Caliph, who immediately summoned the Governor and his son to Madina. When they appeared before him in Madina, the Caliph handed a whip to the Egyptian complainant and asked him to whip the son of the Governor in his presence. After taking his revenge when the Egyptian was about to hand over the whip to Umar, he said to the Egyptian: "Give one stroke of the whip to the Honourable Governor as well. His son would certainly have not beaten you were it not for the false pride that he had in his father's high office." The plaintiff submitted: "The person who had beaten me, I have already avenged myself on

him." Umar said: "By God, if you had beaten him (the Governor I would not have checked you from doing so. You have spared him of your own free will." Then he (Umar) angrily turned to Amr bin al-As and said: " O Amr, when did you start to enslave the people, though they were born free of their mothers?" When the Islamic state was flourishing in its pristine glory and splendour the common people could equally lodge complaints against the caliph of the time in the court and the caliph had to appear before the *qadi* to answer the charges. And if the caliph had any complaint against any citizen, he could not use his administrative powers and authority to set the matter right, but had to refer the case to the court of law for proper judication

14. THE RIGHT TO AVOID SIN

Islam also confers this right on every citizen that he will not be ordered to commit a sin, a crime or an offence; and if any government, or the administrator, or the head of department orders an individual to do a wrong, then he has the right to refuse to comply with the order. His refusal to carry out such a crime or unjust instructions would not be regarded as an offence in the eyes of the Islamic law. On the contrary giving orders to one's subordinates to commit a sin or do a wrong is itself an offence and such a serious offence that the officer who gives this sinful order whatever his rank and position may be, is liable to be summarily dismissed. These clear instructions of the Prophet are summarized in the following *Hadith*: "It is not permissible to disobey God in obedience to the orders of any human being" (*Musnad* of Ibn Hanbal). In other words no one has the right to order his subordinates to do anything against the laws of God. If such an order is given, the subordinate has the right to ignore it or openly refuse to carry out such instructions. According to this rule no offender will be able to prove his innocence or escape punishment by saying that this offence was committed on the orders of the government or superior officers. If such a situation arises then the person who commits the offence and the person who orders that such an offence be committed, will both be liable

o face criminal proceedings against them. And if an officer takes any improper and unjust measures against a subordinate who refuses to carry out illegal orders, then the subordinate has the right to go to the court of law for the protection of his rights, and he can demand that the officer be punished for his wrong or unjust orders.

15. THE RIGHT TO PARTICIPATE IN THE AFFAIRS OF STATE

According to Islam, governments in this world are actually representatives (*Khalifa*) of the Creator of the universe, and this responsibility is not entrusted to any individual or family or a particular class or group of people but to the entire Muslim nation. The Holy Qur'an says: "God has promised to appoint those of you who believe and do good deeds as (His) representatives on earth" (24:55). This clearly indicates that *khilafa* is a collective gift of God in which the right of every individual Muslim is neither more nor less than the right of any other person. The correct method recommended by the Holy Qur'an for running the affairs of the state is as follows: "And their business is (conducted) through consultation among themselves" (42:38). According to this principle it is the right of every Muslim that either he should have a direct say in the affairs of the state or a representative chosen by him and other Muslims should participate in the consultation of the state. Islam, under no circumstance, permits or tolerates that an individual or a group or party of individuals may deprive the common Muslims of their rights, and usurp powers of the state. Similarly, Islam does not regard it right and proper that an individual may put up a false show of setting up a legislative assembly and by means of underhand tactics such as fraud, persecution, bribery, etc., gets himself and men of his choice elected in the assembly. This is not only a treachery against the people whose rights are usurped by illegal and unfair means, but, against the Creator who has entrusted the Muslims to rule on this earth on His behalf, and has prescribed the procedure of an assembly for exercising

these powers. The *shura* or the legislative assembly has no other meaning except that:

- (1) The executive head of the government and the members of the assembly should be elected by free and independent choice of the people.
- (2) The people and their representatives should have the right to criticize and freely express their opinions.
- (3) The real conditions of the country should be brought before the people without suppressing any fact so that they may be able to form their opinion about whether the government is working properly or not.
- (4) There should be adequate guarantee that only those people who have the support of the masses should rule over the country and those who fail to win this support should be removed from their position of authority.

Rights of Enemies at War

After dealing with the rights of the citizens of an Islamic state, I would like to briefly discuss the rights which Islam has conferred on its enemies. In the days when Islam came into focus the world was completely unaware of the concept of humane and decent rules of war. The West became conscious of this concept for the first time through the works of the seventeenth century thinker, Grotius. But the actual codification of the 'international law' in war began in the middle of the nineteenth century. Prior to this no concept of civilized behaviour in war was found in the West. All forms of barbarity and savagery were perpetrated in war, and the rights of those at war were not even recognised, let alone respected. The laws which were framed in this field during the nineteenth century or over the following period up to the present day, cannot be called 'laws' in the real sense of the word. They are only in the nature of conventions and agreements and calling them 'international law' is actually a kind of misnomer, because no nation regards them binding when they are at war, unless, of course, when the adversaries also agree to abide by them. In other words, these civilized laws imply that if our enemies respect them then we shall also abide by them, and if they ignore these human conventions and take recourse to barbaric and cruel ways of waging war, then we shall also adopt the same or similar techniques. It is obvious that such a course which depends on mutual acceptance and agreement cannot be called 'law'. And this is the reason why the provisions of this so-called 'international law' have been flouted and ignored in every way,

and every time they have been revised, additions or deletions have been made in them.

LAW OF WAR AND PEACE IN ISLAM

The rules which have been framed by Islam to make war civilized and humane, are in the nature of law, because they are the injunctions of God and His Prophet which are followed by Muslims in all circumstances, irrespective of the behaviour of the enemy. It is now for the scholars to find out how far the West has availed of the laws of war given by Islam thirteen hundred years ago; and even after the adaptation of some of the laws of Islam how far the West attained those heights of civilized and humane methods of warfare which Muslims reached through the blessings of Islam. Western writers have often asserted that the Prophet had borrowed everything in his teachings from the Jews and the Christians. Instead of saying anything in its refutation I will only recommend the reader to refer to the Bible* so that he can see which methods of war are recommended by the sacred Book of these Western claimants to civilization and culture.

We have examined in some detail the basic human rights that Islam has conferred on man. Let us now find out what rights and obligations Islam recognises for an enemy.

THE RIGHTS OF THE NON-COMBATANTS

Islam has first drawn a clear line of distinction between the combatants and the non-combatants of the enemy country. As far as the non-combatant population is concerned such as women, children, the old and the infirm, etc., the instructions of the Prophet are as follows: "Do not kill any old person, any child or any woman" (Abu Dawud). "Do not kill the monks in monasteries" or "Do not kill the people who are sitting in places

* In this connection the study of the following chapters of the Holy Bible will be quite sufficient: Book of Exodus Ch. XXIV, The Book of Numbers, Ch. III, The Book of Deuteronomy Chs. II, VII, XXX and the Book of Joshua, Chs. VI and VIII.

of worship" (*Musnad* of Ibn Hanbal).

During a war, the Prophet saw the corpse of a woman lying on the ground and observed: "She was not fighting. How then she came to be killed?" From this statement of the Prophet the exegesis and jurists have drawn the principle that those who are non-combatants should not be killed during or after the war.

THE RIGHTS OF THE COMBATANTS

Now let us see what rights Islam has conferred on the combatants.

1. Torture with Fire

In the *Hadith* there is a saying of the Prophet that: "Punishment by fire does not behove anyone except the Master of the Fire" (Abu Dawud). The injunction deduced from this saying is that the adversary should not be burnt alive.

2. Protection of the Wounded

"Do not attack a wounded person"—thus said the Prophet. This means that the wounded soldiers who are not fit to fight, nor actually fighting, should not be attacked.

3. The Prisoner of War Should not be Slain

"No prisoner should be put to the sword"—a very clear and unequivocal instruction given by the Prophet.

4. No one Should be Tied to be Killed

"The Prophet, has prohibited the killing of anyone who is tied or is in captivity."

5. No Looting and Destruction in the Enemy's Country

Muslims have also been instructed by the Prophet that if they should enter the enemy's territory, they should not indulge in pillage or plunder nor destroy the residential areas, nor touch the property of anyone except those who are fighting with them.

1 The impact of this injunction has been so great that Abu Ayyub Ansari, who has narrated this *Hadith* from the Prophet, has said "I vow by the name of God, in whose hand is my life, that I will not slaughter even a chicken after tying it with a string."

It has been narrated in the *Hadith*: "The Prophet has prohibited the Believers from loot and plunder" (Bukhari; Abu Dawud). His injunction is: "The loot is no more lawful than the carrion" (Abu Dawud). Abu Bakr Siddiq used to instruct the soldiers while sending them to war, "Do not destroy the villages and towns, do not spoil the cultivated fields and gardens, and do not slaughter the cattle." The booty of war which is acquired from the battleground is altogether different from this. It consists of the wealth, provisions and equipment captured only from the camps and military headquarters of the combatant armies.

6. Sanctity of Property

The Muslims have also been prohibited from taking anything from the general public of a conquered country without paying for it. If in a war the Muslim army occupies an area of the Enemy country, and is encamped there it does not have the right to use the things belonging to the people without their consent. If they need anything, they should purchase it from the local population or should obtain permission from the owners. Abu Bakr Siddiq, while instructing the Muslim armies being despatched to the battlefield would go to the extent of saying that Muslim soldiers should not even use the milk of the milch cattle without the permission of their owners.

7. Sanctity of a Dead Body

Islam has categorically prohibited its followers from disgracing or mutilating the corpses of their enemies as was practised in Arabia before the advent of Islam. It has been said in the *Hadith*: "The Prophet has prohibited us from mutilating the corpses of the enmies" (Bukhari; Abu Dawud). The occasion on which this order was given is highly instructive. In the battle of Uhud the disbelievers mutilated the bodies of the Muslims who had fallen on the battlefield and sacrificed their lives for the sake of Islam, by cutting off their ears and noses, and threading them together to put round their necks as trophies of war. The abdomen of Hamza, the uncle of the Prophet, was ripped open by Quraysh, his liver was taken out and chewed by Hinda, the wife of Abu

Sufyan, the leader of the Makkan army. The Muslims were naturally enraged by this horrible sight. But the Prophet asked his followers not to mete out similar treatment to the dead bodies of the enemies. This great example of forbearance and restraint is sufficient to convince any reasonable man who is not blinded by prejudice or bias, that Islam is really the religion sent down by the Creator of the universe, and that if human emotions had any admission in Islam, then this horrible sight on the battlefield of Uhud would have provoked the Prophet to order his followers to mutilate the bodies of their enemy in the same manner.

8. Return of Corpses of the Enemy

In the battle of Ahzab² a very renowned and redoubtable warrior of the enemy was killed and his body fell down in the trench which the Muslims had dug for the defence of Madina. The unbelievers presented ten thousand dinars to the Prophet and requested that the dead body of their fallen warrior may be handed over to them. The Prophet replied "I do not sell dead bodies. You can take away the corpse of your fallen comrade."

9. Prohibition of Breach of Treaties

Islam has strictly prohibited treachery. One of the instructions that the Prophet used to give to the Muslim warriors while sending them to the battlefield was: "Do not be guilty of breach of faith." This order has been repeated in the Holy Qur'an and the Hadith again and again, that if the enemy acts treacherously let him do so, you should never go back on your promise. There is a famous incident in the peace treaty of Hudaybiya, when after the settlement of the terms of the treaty, Abu Jandal, the son of the emissary of the unbelievers who had negotiated this treaty with the Muslims, came, fettered and blood stained, rushing to the Muslim camp and crying for help. The Prophet told him, "Since the terms of the treaty have been

²Also known as the Battle of Trench, occurred in 5 A. H./626 C.E.

settled, we are not in a position to help you out. You should go back with your father. God will provide you with some other opportunity to escape this persecution." The entire Muslim army was deeply touched and grieved at the sad plight of Abu Jandal and many of them were moved to tears. But when the Prophet declared that "we cannot break the agreement," not even a single person came forward to help the unfortunate prisoner so the unbelievers forcibly dragged him back to Makkah. This is an unparalleled example of the observance of the terms of agreement by the Muslims, and Islamic history can show many examples of a similar nature.

10. Rules About Declaration of War

It has been laid down in the Holy Qur'an: "If you apprehend breach of treaty from a people, then openly throw the treaty at their faces" (8:58). In this verse, Muslims have been prohibited from opening hostilities against their enemies without properly declaring war against them, unless of course, the adversary has already started aggression against them. Otherwise the Qur'an has clearly given the injunction to Muslims that they should intimate to their enemies that no treaty exists between them, and they are at war with them. The present day "international law" has also laid down that hostilities should not be started without declaration of war, but since it is a man-made rule, they are free to violate it whenever it is convenient. On the other-hand, the laws for Muslims have been framed by God, hence they cannot be violated.

CONCLUSION

This is a brief sketch of those rights which fourteen hundred years ago Islam gave to man, to those who were at war with each other and to the citizens of its state, which every Believer regards as sacred law. On the one hand, it refreshes and strengthens our faith in Islam when we realise that even in this modern age which makes such loud claims of progress and enlightenment, the world has not been able to produce more just

and equitable laws than those given 1400 years ago. On the other hand it hurts one's feelings that Muslims are in possession of such a splendid and comprehensive system of law and yet they look forward for guidance to those leaders of the West who could not have dreamed of attaining those heights of truth and justice which were achieved a long time ago. Even more painful than this is the realisation that throughout the world the rulers who claim to be Muslims have made disobedience to their God and the Prophet as the basis and foundation of their government. May God have mercy on them and give them the true guidance.